

State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS & PROFESSIONAL REGISTRATION

IN THE MATTER OF:

Underwriters Service Agency,

Renewal Applicant.

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Case No. 10-1025652C

REFUSAL TO RENEW BUSINESS ENTITY PRODUCER LICENSE

On October 28, 2010, Mary S. Erickson, Senior Enforcement Counsel and Counsel to the Consumer Affairs Division, submitted a Verified Petition to the Director alleging cause for refusing to renew the business entity producer license of Underwriters Service Agency. After reviewing the Petition and the file, the Director issues the following findings of fact, conclusions of law, and summary order:

FINDINGS OF FACT

1. Underwriters Service Agency is a registered fictitious name with the Missouri Secretary of State.
2. The Department issued a business entity producer license to Underwriters Service Agency on October 6, 1972, No. 88083. Such license has been subsequently renewed, remains active, and will expire on November 1, 2010.
3. On or about October 13, 2010, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Underwriters Service Agency's request for renewal for its business entity producer license.
4. In the request for renewal, Underwriters Service Agency confirmed its mailing address as 3720 Hampton Ave., St. Louis, Missouri 63109.
5. James C. McCain, Jr., ("McCain") is a licensed insurance producer in Missouri and is the sole owner/officer of Respondent Underwriters Service Agency. The Department issued McCain an insurance producer license, No. 287172, on June 4, 1981, which has subsequently been renewed and remains active. His license will expire on March 10, 2012.
6. McCain is also the sole owner/officer of Missouri Automobile Insurance Underwriters Agency ("Missouri Automobile"), which is an expired fictitious name according to the

Missouri Secretary of State. The Department issued Missouri Automobile a business entity producer license, No. 5928, on August 20, 1986. The license and was subsequently renewed and remained active until August 20, 2010 when it expired.

7. On April 8, 2010, McCain testified under oath at a subpoena conference held at the Department's offices in Jefferson City.
8. At the subpoena conference, McCain explained that all of the licensed insurance producers work under and write for Underwriters Service Agency.
9. At the subpoena conference, McCain admitted to the Department that McCain and Underwriters Service Agency accepted premium payments from consumers, or from others on their behalf, and failed to remit the full premium to the insurers within 30 days after the date of receipt.
10. At the subpoena conference, McCain admitted to the Department that checks made payable to the Missouri FAIR Plan were deposited into Underwriters Service Agency's bank accounts.
11. McCain also admitted to the Department that the failure to remit premiums paid by consumers, or by others on their behalf, has resulted and may in the future result in failure to obtain or continue insurance coverage on behalf of an insured or prospective insured.
12. Underwriters Service Agency, through McCain, offered and sold homeowners insurance through the Missouri Basic Property Insurance Inspection and Placement Program ("Missouri FAIR Plan").
13. The Missouri FAIR Plan does not enter into agency contracts with insurance producers or business entity producers.
14. The Missouri FAIR Plan did not authorize Underwriters Service Agency to accept payments for homeowners insurance for the Missouri FAIR Plan.
15. Underwriters Service Agency, through McCain, deposited premium checks made payable to the Missouri FAIR Plan into its business bank accounts (at Regions Bank and/or Southwest Bank) without authorization from Missouri FAIR Plan. The checks represented premium payments for homeowners policies for the following consumers (with more than one check deposited by Underwriters Service Agency for some consumers):
 - 1) Michelle and Joyce Anderson
 - 2) Angela Bonnett
 - 3) Kathy Botonis
 - 4) Ali Burhan
 - 5) Deborah Cothrine

- 6) Lena Elijah
- 7) Bruce Givens
- 8) Roger Harris
- 9) Byron Hayes
- 10) Jamil Hoffman
- 11) Angela Howard
- 12) Keisha Hudson
- 13) Hunni Hughes
- 14) Curtis Hurd
- 15) Sandra Jackson
- 16) Alashantez Johnson
- 17) Arnette Johnson
- 18) Antoinette Jones
- 19) Clifton and Cena Kinnie
- 20) Johnny Mitchell
- 21) Tracey Robbins
- 22) Shatanya Rodgers
- 23) Tommy Valiant
- 24) Tyree Washington
- 25) Minnie Williams
- 26) Sheridan Yoder

16. Underwriters Service Agency failed to maintain adequate account levels in its bank accounts to cover premiums due for consumers Michelle and Joyce Andersons' homeowners insurance. The check to cover premiums for the Andersons was returned due to insufficient funds.
17. As a result of Underwriters Service Agency failure to maintain adequate account levels, Michelle and Joyce Andersons' policy was cancelled.
18. When Underwriters Service Agency and McCain received the homeowners insurance premium payment for the entire year from consumers, or from others on consumers' behalf, Underwriters Service Agency and McCain, without consent or prior authorization from consumers, changed the premium payments from annual to installment payments, deposited those premium payments into the business bank accounts, and only paid installments on those policies.
19. Underwriters changed the premium payments from annual to installment payments, without consent or prior authorization, for the following consumers:
 - 1) Michelle and Joyce Anderson
 - 2) Angela Bonnett
 - 3) Kathy Botonis
 - 4) Ali Burhan
 - 5) Bruce Givens
 - 6) Byron Hayes

- 7) Jamil Hoffman
- 8) Angela Howard
- 9) Keisha Hudson
- 10) Hunni Hughes
- 11) Sandra Jackson
- 12) Arnette Johnson
- 13) Johnny Mitchell
- 14) Tracey Robbins
- 15) Tommy Valiant
- 16) Minnie Williams
- 17) Sheridan Yoder

20. Underwriters Service Agency failed to remit the full premium payments received from the following consumers, or from others on the consumers' behalf, to the Missouri FAIR Plan within 30 days after the date of receipt:

- 1) Michelle and Joyce Anderson
- 2) Angela Bonnett
- 3) Kathy Botonis
- 4) Ali Burhan
- 5) Deborah Cothrine
- 6) Lena Elijah
- 7) Bruce Givens
- 8) Roger Harris
- 9) Byron Hayes
- 10) Jamil Hoffman
- 11) Angela Howard
- 12) Keisha Hudson
- 13) Hunni Hughes
- 14) Curtis Hurd
- 15) Sandra Jackson
- 16) Arnette Johnson
- 17) Clifton and Cena Kinnie
- 18) Johnny Mitchell
- 19) Tracey Robbins
- 20) Shatanya Rodgers
- 21) Tommy Valiant
- 22) Tyree Washington
- 23) Minnie Williams
- 24) Sheridan Yoder

21. By not forwarding to the Missouri FAIR Plan the entire premium payment received from consumers or others on their behalf, Underwriters Service Agency improperly withheld, misappropriated or converted money owed to the Missouri FAIR Plan for the following consumers:

- 1) Michelle and Joyce Anderson
- 2) Angela Bonnett
- 3) Kathy Botonis
- 4) Ali Burhan
- 5) Deborah Cothrine
- 6) Lena Elijah
- 7) Bruce Givens
- 8) Roger Harris
- 9) Byron Hayes
- 10) Jamil Hoffman
- 11) Angela Howard
- 12) Keisha Hudson
- 13) Hunni Hughes
- 14) Curtis Hurd
- 15) Sandra Jackson
- 16) Arnette Johnson
- 17) Clifton and Cena Kinnie
- 18) Johnny Mitchell
- 19) Tracey Robbins
- 20) Shatanya Rodgers
- 21) Tommy Valiant
- 22) Tyree Washington
- 23) Minnie Williams
- 24) Sheridan Yoder

22. Underwriters Service Agency failed to remit the homeowners insurance premium payments received from consumers, or from others on consumers' behalf, to the insurer, the Missouri FAIR Plan, in a timely manner, which resulted in the lapse or cancellation of the following consumers' homeowners policies:

- 1) Michelle and Joyce Anderson
- 2) Angela Bonnett
- 3) Kathy Botonis
- 4) Ali Burhan
- 5) Keisha Hudson
- 6) Sandra Jackson
- 7) Johnny Mitchell
- 8) Tracey Robbins
- 9) Minnie Williams

23. On May 27, 2010, the Consumer Affairs Division, through counsel, filed with the Director a "Verified Statement of Charges" pursuant to § 374.046 RSMo (Supp. 2009),¹ seeking the following relief, *inter alia*, from the Director in the case of *In re: James C. McCain, Jr., et al.*, Case No 10-0407429C:

¹ All statutory references are to RSMo (Supp. 2009) unless otherwise indicated.

- a. An order finding that McCain, Underwriters Service Agency, and Missouri Automobile² have engaged and are engaging in acts, practices, omissions or courses of business constituting violations of the laws of this state relating to insurance in Chapters 374 and 375 and in violation of rules adopted pursuant to such chapters;
 - b. An order finding that § 375.144 is being violated and that consumers are being aggrieved by the violations;
 - c. A summary cease and desist order against McCain, Underwriters Service Agency, and Missouri Automobile, to prohibit the continuation of acts, practices, omissions and courses of business which violate § 375.144;
 - d. A curative order or other orders directing McCain, Underwriters Service Agency, and Missouri Automobile to take other actions necessary or appropriate to comply with the insurance laws of this state;
 - e. An order to show cause and setting the matter for hearing;
 - f. An order ordering the payment of monetary penalties pursuant to §§ 374.046, 374.049, 374.280, and 374.145;
 - g. An order ordering the payment of reasonable costs of the investigation of this matter pursuant to § 374.046.
24. On May 27, 2010, the Director issued a "Summary Cease and Desist Order" finding multiple violations of Missouri's insurance laws by McCain, Underwriters Service Agency, and Missouri Automobile and ordering them to cease and desist the continuation of their unlawful acts, practices, omissions, or courses of business.
 25. The matter of *In re: James C. McCain, Jr., et al.*, Case No 10-0407429C, is set for hearing on November 17, 2010.
 26. On September 2, 2010, Chief of Investigations Carrie Couch sent a letter to McCain and Underwriters Service Agency at their address of record enclosing a copy of a complaint from consumer Carol Hagan against McCain and Underwriters Service Agency.
 27. McCain and Underwriters Service Agency did not respond to the September 2, 2010 letter, nor was the letter returned to the Department by the U.S. Mail. Neither McCain nor Underwriters Service Agency contacted the Department to demonstrate a reasonable justification for the delayed response.

² The Verified Statement of Charges also named Carol Herget, an insurance producer working for McCain and Underwriters Service Agency, as a Respondent. Herget has subsequently entered into a Consent Order revoking her license and was dismissed from the action.

CONCLUSIONS OF LAW

28. Section 375.141 RSMo (Supp. 2009) provides, in part:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

* * *

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere[.]

* * *

3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

29. Section 375.051.2 states:

Any insurance producer who shall act on behalf of any applicant for insurance or insured within this state, or who shall, on behalf of any applicant for insurance or insured, seek to place insurance coverage, deliver policies or renewal receipts and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, shall be held responsible in a trust or fiduciary capacity to the applicant for insurance or insured for any money so collected or received by him or her.

30. Section 375.144 states:

It is unlawful for any person, in connection with the offer, sale, solicitation or negotiation of insurance, directly or indirectly, to:

(1) Employ any deception, device, scheme, or artifice to defraud;

- (2) As to any material fact, make or use any misrepresentation, concealment, or suppression;
- (3) Engage in any pattern or practice of making any false statement of material fact; or
- (4) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person

31. Title 20 CSR 700-1.140(1)(D) states:

Insurance producers shall remit all premium payments associated with a personal insurance policy to those persons entitled to them as soon as is reasonably possible after their receipt by the licensee, but in no event later than thirty (30) days after the date of receipt, provided, however, that premiums may be remitted at a later point in time if the licensee is so authorized under a written agreement between the licensee and the person legally entitled to the premiums. In no event, however, shall a licensee retain premium payments if to do so will result in the failure to obtain or continue coverage on behalf of an insured or prospective insured.

32. Title 20 CSR 100-4.100, Required Response to Inquiries by the Consumer Affairs Division, provides in relevant part:

(2) Except as required under subsection (2)(B)

(A) Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

(B) This rule shall not apply to any other statute or regulation which requires a different time period for a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

33. Under Missouri law, when a letter is duly mailed by first class mail, there is a rebuttable presumption that the letter was delivered to the addressee in the due course of the mails. *Hughes v. Estes*, 793 S.W.2d 206 (Mo. App. 1990).

34. The principal purpose of § 375.141 RSMo is not to punish licensees, but to protect the public. *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984).

35. Under Missouri law, when a letter is duly mailed by first class mail, there is a presumption that the letter was delivered to the addressee. *Schlereth v. Hardy*, 280 S.W.3d 47, 49 (Mo. 2009).
36. Each of the 24 instances in which Underwriters Service Agency accepted premium payments from consumers, or from others on consumers' behalf, and failed to remit the full premium to the insurer within 30 days after the date of receipt is a separate violation of 20 CSR 700-1.140(1)(D). Therefore, cause exists to refuse Underwriters Service Agency's business entity producer's license under § 375.141.1(2).
37. Underwriters Service Agency has violated § 375.144(1) by employing a deception, device, scheme or artifice to defraud in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, in that it accepted premium payments from consumers or from others on their behalf and failed to remit the full premium to the insurers within 30 days after the date of receipt. By failing to remit the full premium, Underwriters engaged in unlawful acts to defraud the Missouri FAIR Plan and consumers for whose benefit the money had been paid for their policies. Underwriters Service Agency's acts to defraud resulted in some instances where the consumers' policies lapsed or were cancelled. Therefore, renewal of Underwriters Service Agency's business entity producer license may be refused based upon § 375.141.1(2), because it violated § 375.144(1).
38. By failing to remit the full premium to the Missouri Fair Plan and only paying installments on the consumers' policies, Underwriters Service Agency improperly withheld, misappropriated or converted money received in the course of doing insurance business, which is grounds for refusal under § 375.141.1(4).
39. Underwriters Service Agency, through its sole owner and officer, James McCain, Jr., admitted that the full premium payments from consumers or from others on their behalf were not remitted to the insurers within 30 days after the date of receipt, which is a deception, device, scheme or artifice to defraud in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly. By admitting to employing a deception, device, scheme or artifice to defraud, Underwriters Service Agency admitted to committing unfair trade practices or fraud. Therefore cause exists to refuse Underwriters Service Agency's business entity producer license under § 375.141.1(7).
40. Underwriters Service Agency's acceptance of premium payments from consumers, or from others on their behalf, and failure to remit the full premium to the insurer within 30 days after the date of receipt shows the use of fraudulent, coercive, or dishonest practices, or demonstrates incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state. Hence, Underwriters Service Agency may be refused renewal of its business entity producer license under § 375.141.1(8).
41. Underwriters Service Agency failed to maintain adequate account levels in bank accounts to cover premiums due for Michelle and Joyce Andersons' homeowners insurance, and

thus violated § 375.051, by not acting in the trust or fiduciary capacity required. Violation of § 375.051 by Underwriters Service Agency is cause to refuse renewal of Underwriters Service Agency's business entity producer license under § 375.141.1(2).

42. Underwriters Service Agency's failure to maintain adequate account levels in bank accounts to cover premiums due for consumers' homeowners shows the use of fraudulent, coercive, or dishonest practices, or demonstration of incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state. Therefore, Underwriters Service Agency's business entity producer license may be refused under § 375.141.1(8).
43. Underwriters Service Agency has violated § 375.144(2) in at least 26 instances by engaging in acts, practices, omissions or courses of business which operated as a fraud or deceit upon consumers, insurers, and others, in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, in that Underwriters Service Agency deposited checks made payable to the Missouri FAIR Plan into its business accounts without authorization from Missouri FAIR Plan. Each of the at least 26 instances is a separate violation of § 375.144(2). Renewal of Underwriter Service Agency's business entity producer license may be refused based upon § 375.141.1(2), because it violated § 375.144(2).
44. Underwriters Service Agency, through its sole owner and officer, James McCain, Jr., admitted that checks made payable to the Missouri FAIR Plan were deposited into Underwriters Service Agency's business accounts without authorization from the Missouri FAIR Plan. By admitting to engaging in the acts, practices, omissions or course of business which operated and continues to operate as a fraud or deceit upon consumers, insurers, and others, in connection with the offer, sale, solicitation or negotiations of insurance, directly or indirectly, Underwriters Service Agency admitted to committing unfair trade practices or fraud. Therefore, cause exists to refuse Underwriters Service Agency's business entity producer license under § 375.141.1(7).
45. By depositing checks made payable to the Missouri FAIR Plan into its business accounts without authorization, Underwriters Service Agency used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state. The business entity producer license of Underwriters Service Agency may therefore be refused renewal based upon § 375.141.1(8).
46. Underwriters Service Agency failed to respond to a Consumer Affairs Division inquiry regarding the consumer complaint of Carol Hagan and failed to demonstrate a reasonable justification for the delay. This failure to respond constitutes cause to refuse to renew Underwriters Service Agency's business entity insurance producer license under § 375.141.1(2) for violating 20 CSR 100-4.100.
47. In applying his discretion, the Director has considered the history of Underwriters Service Agency and all of the circumstances surrounding its renewal application for its

business entity producer license. The egregious pattern and practice of depositing premium checks made payable to the Missouri FAIR Plan into Underwriters Service Agency's accounts, and then failing to timely forward the premiums to the Missouri FAIR Plan, violates numerous Missouri insurance laws. In addition, as a direct result of the unlawful acts of Underwriters Service Agency, Missouri insurance consumers' policies lapsed or were cancelled. Furthermore, when requested to explain a new complaint, Underwriters Service Agency failed to respond to the Consumer Affairs Division's inquiry.

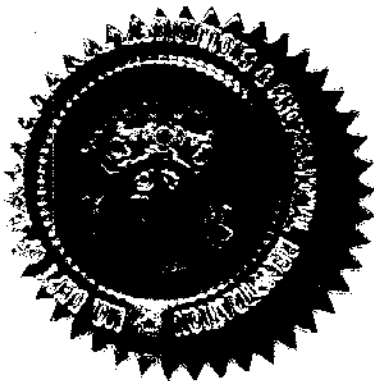
48. Granting renewal of Underwriters Service Agency's business entity producer license would not be in the interest of the public, and, accordingly, the Director exercises his discretion by summarily refusing to renew Underwriters Service Agency's business entity producer license.
49. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that renewal of the business entity producer license of Underwriters Service Agency is hereby summarily **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 28th DAY OF OCTOBER, 2010.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2010, a copy of the foregoing Notice and Order was served upon the Underwriters Service Agency by certified mail 70073020000315723127.

Underwriters Service Agency
3720 Hampton Ave.
St. Louis, MO 63109


Kimberly Landers, Legal Secretary